

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
	)	
Revision of the Commission's Rules To	)	CC Docket 94-102
Ensure Compatibility With Enhanced 911	)	
(E911) Emergency Calling Systems	)	
	)	

To: Wireless Telecommunications Bureau

**REQUEST FOR A LIMITED WAIVER AND EXTENSION  
OF THE COMMISSION'S PHASE II E911 RULES**

Airadigm Communications, Inc., ("Airadigm"), by counsel and pursuant to 47 C.F.R. § 1.925, hereby requests a limited waiver and extension of the 47 C.F.R. § 20.18(g)(1)(v) Phase II enhanced 911 (E911) requirement that Tier III carriers who employ a network-based location technology shall provide Phase II 911 enhanced service to at least 50 percent of the PSAP coverage area or population within six months of a PSAP request.<sup>1</sup>

As set forth below, strict enforcement of this requirement would be unduly burdensome to Airadigm. Further, it would ignore the unique facts and circumstances involving GSM licensees operating in rural areas. As such, grant of the limited waiver and extension request would serve the public interest.

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<sup>1</sup> 47 C.F.R. § 20.18(f).

## **I. Background**

Airadigm provides wireless service in rural Wisconsin. It holds several CMRS licenses<sup>2</sup> that are subject to this request, and operates a GSM network. As described more fully below, Airadigm has chosen to deploy a “network-based” E911 solution throughout its wireless network.

## **II. Relief Sought**

With respect to each of the PSAPs that have requested Phase II E911 service, Airadigm requests a waiver of the requirement that it must provide Phase II 911 service to at least 50 percent of the PSAPs coverage area or population until December 31, 2006.

## **III. Waiver Standard**

A waiver is appropriate whenever special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>3</sup> The Commission has established standards to be used when acting upon requests for a waiver of E911 deadlines and obligations.<sup>4</sup> The Commission has held that it will grant waiver requests that are specific, focused, and limited in scope, with a clear path to full compliance.<sup>5</sup> Further, the Commission has stated that carriers should undertake concrete steps

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<sup>2</sup> Airadigm holds the following personal communication service (PCS) licenses: KNLF394, KNLF395, KNLF396, KNLF397, KNLF398, KNLF399, KNLF400, KNLF401, KNLF402, KNLF403, KNLF404, KNLF405, KNLF406, KNLF881, and KNLG278.

<sup>3</sup> 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>4</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, 15 FCC Rcd 17442, 17457-58, paras. 43-44 (2000) (*E911 Fourth Memorandum Opinion and Order*).

<sup>5</sup> *E911 Fourth Memorandum Opinion and Order*, 15 FCC Rcd at 17458, para. 44.

necessary to come as close as possible to full compliance and should document their efforts aimed at compliance in support of any waiver request.<sup>6</sup> As set forth below, Airadigm meets the Commission's standards and that the circumstances underlying the request, in sum, present a special case that justifies a limited E911 Phase II waiver and extension.

**IV. Unique and Unusual Circumstances Cause Rigid Enforcement of Section 20.18(f) To Be Unduly Burdensome**

**A. Network Solution Presents Special Problems for GSM Carriers**

As the Commission is well aware, GSM carriers operating in rural areas such as Airadigm face unique and unusual circumstances regarding deployment of Phase II E911. Because service areas such as Airadigm are isolated, rural and dense with forests, a network-based solution to meet the Phase II E911 requirements includes certain material additional issues. Yet, because no vendor has made commercially available a GPS-capable handset, Airadigm has no option other than to choose a network-based solution primarily because it is the only solution available at this time.

**B. Airadigm's Limited Financial Capabilities Provides Yet Another Basis for Grant of a Waiver.**

In July, 1999, facing mounting losses from operations, Airadigm sought bankruptcy protection under Chapter 11. Whereas, Airadigm has since done a most admirable job of continuing to serve the public, and has made considerable strides in its Chapter 11 proceeding and remains hopeful to emerge fully from bankruptcy in the foreseeable future, that has not yet occurred. Indeed, it is quite possible that Airadigm

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<sup>6</sup> Id.

will remain under a Chapter 11 cloud for some time. Moreover, and regardless of the bankruptcy status per se, Airadigm has no money to devote to this effort. Nor does it have the resources to obtain any type of financing at this time. Implementing a network-based solution will require major hardware and software upgrades and additions to Airadigm's network architecture (Airadigm estimates costs for implementing a network-based solution to be approximately \$3 million). Thus, Airadigm is currently in no financial position that will allow it to implement Phase II E911 service.<sup>7</sup>

#### **V. Airadigm Has a Clear Path to Compliance**

As discussed above, financial considerations have been a matter at the heart of Airadigm's request for waiver. Those problems are likely to recede as the State of Wisconsin implements a plan to support E911 compliance by virtue of collecting a fixed sum (approximately 82.5 cents per month) for each wireless subscriber. Collected funds will be used to support E911 Phase II build costs, and will be distributed quarterly to qualified carriers.

Whereas Airadigm cannot, of course, guarantee that the contemplated fund will function as envisioned, Airadigm has no reason to believe that it will not or that Airadigm will not qualify for substantial support. As a result, Airadigm projects that (assuming equipment availability to smaller carriers) it will be able to come into full compliance with the FCC's E911 Phase II rules by December 31, 2006.

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<sup>7</sup> Commission records are replete with rulings where lack of financial capability, and Chapter 11 filings in particular, have been deemed to constitute good cause for grant of waiver: See e.g. Mobilemedia Corporation, et al, 14 FCC Rcd 3558 (1999). Airadigm should be treated similarly here. See Melody Music, Inc v FCC, 345 F.2d 730, 734 (D.C. Cir. 1965).

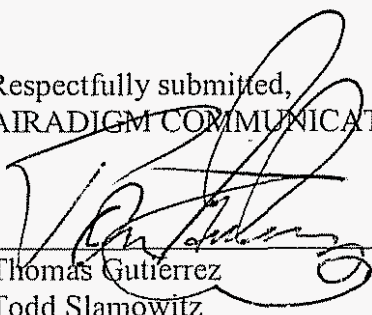
**VI. Conclusion**

Based on the foregoing reasons, grant of a limited waiver of the Commission's Phase II E911 rules will serve the public interest.

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December 1, 2005

Respectfully submitted,  
AIRADIGM COMMUNICATIONS, INC.


  
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Thomas Gutierrez  
Todd Slamowitz

*Its Attorneys*

**DECLARATION OF JOHN ALTAMURA**

I, John Altamura, declare under penalty of perjury that the foregoing is true and correct.

1. I am the President of Airadigm Communications, Inc.
2. I am familiar with the facts contained in the foregoing "Request for Waiver and Extension of the Commission's Phase II E911 Rules", and I verify that those facts are true and correct to the best of my knowledge and belief, except that I do not and need not attest to those facts which are subject to official notice by the Commission.

  
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John Altamura